imposes on all customers within a state.[133] We seek comment on our proposed amendment.

74. We also propose that Link Up rules make clear that activation charges that are waived, reduced, or eliminated when activation is accompanied by purchase of additional products, services, or minutes are not customary charges eligible for universal service support. TracFone's petition indicates that it supports this proposal, but other ETCs disagree, arguing that there are legitimate reasons for an ETC to waive customary activation charges for low-income consumers, including compliance with some state requirements.[134] For instance, some commenters suggest we create an exception to the proposed rule in instances where a state commission has ordered ETCs to waive the remainder of the connection charge not reimbursed by USF.[135] We seek comment on whether, if we amend our rules as described, we should recognize exceptions for certain categories or types of fee waivers or reductions.

75. We also seek to develop a record regarding the prevalence of situations in which ETCs seek reimbursement for connecting the same customer more than one time, at the same location. For example, if a customer's service was disconnected for non-payment, do ETCs ever impose another connection charge to resume service to that address? Do they do so frequently, or as a matter of course? How would we evaluate whether such charges are reasonable? We seek comment on whether our rules should be clarified to prohibit ETCs from seeking more than one Link Up subsidy for the same customer at the same location.

76. We seek comment on whether our Link Up rules should be further amended to address concerns with waste, fraud and abuse in this area. For example, one commenter suggests that we require each ETC to certify that its activation charge is equally applicable to all customers.[136] We seek comment on whether such a certification process would effectively prevent waste, and how burdensome such a certification requirement would be. In addition, we seek comment on whether we should adopt a rule that prohibits resellers from imposing a connection charge on consumers when the underlying wholesale provider has not assessed a similar connection charge on the reseller.

77. *Link Up Support Amount.* Historically, incumbent telephone companies incurred costs in initiating service, such as the cost of visiting the housing unit to physically connect a telephone line to initiate service. In contrast, today, service initiation in virtually all instances for both wireless and wireline providers is done remotely via software, with the actual costs of installation likely to be significantly lower than several decades ago.

78. Our rules specifying Link Up amounts have not been updated to reflect the changes in the industry that have occurred relating to service initiation. We seek comment on what the typical service initiation fee is for non-Lifeline subscribers and ask whether we should reduce the current $30 cap on Link Up support to some lower figure.

79. Our current rules specify that ETCs may receive Link Up support for the revenue they forgo in reducing their customary charge for commencing telecommunications service.[137] In order to receive Link Up support, ETCs are required to keep accurate records of the revenues they forgo in reducing their customary charge for commencing service.[138] The forgone revenues for which the ETCs

[133] See Appendix A at 47 C.F.R. § 54.400(e).

[134] *Id.*

[135] AT&T TracFone Link Up Petition Comments at 3; Competitive Eligible Telecommunications Carriers TracFone Link Up Petition Comments at 4.

[136] Budget PrePay, Inc. and GreatCall, Inc. TracFone Link Up Petition Comments at 4.

[137] 47 C.F.R. § 54.413.

[138] *Id.*

may receive reimbursement shall include only the difference between the carrier's customary connection and the charges actually assessed to the participating low-income consumer. Moreover, the reduction shall be half of the customary charge or $30, whichever is less.[139] As discussed above, there is concern that some ETCs may be inflating connection charges in an effort to collect money from the Fund. In order to make Link Up reimbursement more transparent and limit potential waste of funds, we seek comment on whether we should require all ETCs seeking Link Up reimbursement to submit cost support to USAC for the revenues they forgo in reducing their customary charges. Since ETCs are required to keep accurate records of the revenues they forgo for Link Up, it may not be too burdensome to require the ETCs to submit such data to USAC. We seek comment on this proposal and whether there are alternative ways to ensure that Link Up reimbursement is based on actual revenues forgone as a result of connecting low-income consumers. We also seek comment on what underlying costs may be recovered through Link Up. For instance, should Link Up be provided for costs associated with marketing and customer acquisition, or limited to costs associated with activating a phone line or establishing a billing relationship?

E. Customer Usage of Lifeline-Supported Service

1. Background

80. ETCs receive Lifeline support on a per-subscriber basis. As discussed above, ETCs may therefore have incentives to delay notifying USAC promptly when a subscriber has discontinued service. Pre-paid wireless ETCs do not assess a monthly charge on customers and, therefore, do not bill their customers for Lifeline-supported service, even though they report such lines to USAC for reimbursement. The pre-paid wireless ETC thus could potentially continue to receive Lifeline support for a customer who abandoned the service months before.[140] Moreover, because the pre-paid wireless ETC does not receive monthly payment from the subscriber, it may not even be aware when the subscriber has discontinued service. Even carriers that assess monthly charges may also have disincentives to identify discontinued customers in a timely fashion.[141] The Universal Service Fund should not be used to provide Lifeline support to ETCs to subsidize customers who are not utilizing supported communications services.

81. Some states have imposed "non-usage" procedures on pre-paid wireless ETCs.[142] These

[139] 47. C.F.R. § 54.411(a)(1).

[140] There are many reasons why a consumer may not use his or her Lifeline-supported service. For example, some customers may have lost or abandoned their wireless devices, or may lack a readily accessible source of electricity to charge the device. In other cases, the consumer may have given or sold the phone to another person, in violation of the ETCs' terms of service.

[141] For example, if a wireline ETC charges $12 a month for Lifeline service, and receives $10 from the USF and $2 from the subscriber, if the universal service payment compensates the ETC for its costs of providing service to that subscriber, it still would be financially advantageous for the ETC to report the subscriber as active, even if the subscriber does not pay his bills.

[142] *See, e.g., Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Wisconsin*, 9385-TI-100, Wisconsin Public Service Commission Final Decision, May 21, 2009 (*Wisconsin Non-Usage Order*); *Application of Nexus Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Georgia for the Limited Purpose of Offering Wireless Lifeline and Link Up Service to Qualified Households* (Docket No. 19664), *Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in Georgia for the Limited Purpose of Offering Lifeline Service to Qualified Households* (Docket No. 26282), Georgia Public Service Commission Order Amending ETC Designations, October 20, 2010 (*Georgia Non-Usage Order*); *Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Kansas for the Limited Purpose of Offering Lifeline Service to Qualified Households*, Docket No. 09-TFWZ-945-ETC, Kansas State Corporation Commission Order Granting in Part and (continued....)

procedures are designed to minimize payments from the Universal Service Fund for enrolled Lifeline customers who are no longer using the service.[143] Both TracFone and Virgin Mobile have implemented a policy of de-enrolling Lifeline customers who have not used their wireless phones for 60 days.[144]

2. Discussion

82. We want to ensure that Lifeline support is used for the benefit of low-income subscribers that are actually using the supported service,[145] and we propose to amend our rules to prevent ETCs from obtaining Lifeline support for inactive consumers. Specifically, we propose to prohibit ETCs from seeking reimbursement from the Universal Service Fund for any Lifeline customer who has failed to use his or her service for 60 consecutive days.[146] We seek comment on whether a customer's failure to use service for a specific period of time may reasonably demonstrate, or serve as a proxy for, service discontinuation. If so, we seek comment on whether 60 days is a reasonable period, or whether the period of inactivity should be shorter (*e.g.*, 30 days) or longer (*e.g.*, 90 days).

83. The proposed rule is intended to (1) prevent subsidies going to ETCs for customers that are not using the service; and (2) eliminate incentives that carriers might have to ignore or fail to report that a customer has (or appears to have) discontinued service. We do not seek to penalize subscribers for non-usage, and our proposed rule would not affect the terms or conditions of service that might exist between the ETC and the customer. Nor do we propose to require ETCs to disconnect subscribers for non-usage. We recognize that some customers may use their telephones sparingly, for emergencies or occasional communication. To protect consumers, we propose to require ETCs to alert customers if the ETC imposes any obligation to use service during a specified period of time in order to maintain subsidized service. We seek comment on how ETCs can best inform their Lifeline customers of any requirement to use the phone during a specified period of time. We also seek comment on whether our proposed rules could affect access to 911 services, and if so, how we can ensure that consumers maintain access to emergency services. We note that the Commission's rules require commercial mobile radio service (CMRS) providers subject to the Commission's 911 rules to transmit all wireless 911 calls, including those from non-service initialized phones, to Public Safety Answering Points (PSAPs).[147] We do not seek to modify this rule and our proposed rule would still require ETCs to transmit a Lifeline customer's wireless 911 calls, even if the ETC is no longer providing service to that customer.

84. Although the concern that ETCs may continue to count subscribers that have stopped using service appears greatest with respect to pre-paid wireless service, those concerns are not limited to pre-paid wireless service. We seek comment on whether the rules we propose in this subsection should be limited to particular types of service, or should apply to all types of service.

85. *Minimum Consumer Charges.* In the *2010 Recommended Decision*, the Joint Board

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(Continued from previous page)
Denying in Part Amended Application of TracFone for Designation as ETC for Limited Purpose of Offering Lifeline Service to Qualified Households, December 14, 2010 (*Kansas Non-Usage Order*).

[143] *See Wisconsin Non-Usage Order*; *Georgia Non-Usage Order*; *Kansas Non-Usage Order*.

[144] *Virgin Mobile 2010 ETC Order*, DA 10-2433, at para. 24 (requiring Virgin Mobile to adopt a 60-day usage requirement); Letter from Mitchell F. Brecher, Counsel to TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Oct. 22, 2010).

[145] *Wisconsin Non-Usage Order* at 8; *Georgia Non-Usage Order* at 2; *Kansas Non-Usage Order* at 6.

[146] GAO recognized this general approach as one step toward improving the integrity of the Lifeline program. 2010 GAO REPORT at 36.

[147] *See* 47 C.F.R. § 20.18(b).

expressed concern about consumers receiving Lifeline service offerings that are offered at no cost to the subscriber.[148] In particular, the Joint Board raised concerns about prepaid wireless ETCs, which do not provide a monthly bill and, in some cases, provide handsets and service at no charge to consumers.[149] The Joint Board recommended that, to guard against waste, fraud, and abuse in the Lifeline program, the Commission consider whether a minimum monthly rate should be paid by all Lifeline subscribers, including eligible Tribal subscribers.[150]

86. We seek comment on how best to prevent waste of universal service funds without creating unnecessary obstacles for low-income households to obtaining vital communications services. For instance, one option would be to adopt a rule requiring all ETCs in all states to collect some minimum monthly amount from participating households.[151] If we were to adopt such a rule, what should that monthly amount be–*e.g.*, $1 or some other amount? Alternatively, should we consider requiring ETCs to assess a monthly fee on all Lifeline consumers equivalent to half of the customary monthly Lifeline charges or half of the maximum subsidy provided for under our rules, whichever is less? Would either of these requirements, if adopted, appropriately balance the need to guard against waste, fraud, and abuse in the Lifeline program by ensuring that low-income households have the incentive to make appropriate use of their Lifeline-supported services, with the need to avoid deterring eligible consumers from participating in the program?

87. Another option would be to require ETCs to collect some amount, such as $10 or $15, on a one-time basis from each Lifeline household prior to commencing Lifeline service.[152] Such a rule could create appropriate incentives to ensure that Lifeline consumers genuinely want phone service and should deter situations in which Lifeline-supported service has been activated on a phone that is unused or improperly transferred to third parties.

88. Would either of these proposals create an unreasonable barrier to enrollment for households that need support but cannot afford to pay any fee? What would be the proper amount of financial contribution from low-income consumers that would appropriately balance our dual objectives of deterring waste, fraud, and abuse, while enabling those in need to obtain phone service? Should this amount vary based on the income of the qualifying low-income household?

89. We seek comment on the administrative burdens for ETCs of a requirement to collect a minimal amount, such as $1 per month, from participating consumers. We acknowledge that in other, non-Lifeline contexts, carriers may choose not to bill their customers monthly, and it may not be cost-effective to send a bill to collect such a small amount. Should we allow ETCs to collect a monthly fee on a bi-monthly basis? If we were to adopt a program-wide monthly fee requirement, should we explicitly prohibit carriers from waiving the fee? How can we adopt an approach that is technologically neutral and can be implemented easily by ETCs with diverse business models?

90. *Application of Minimum Charge to Tribal Consumers*. The Commission's rules currently

[148] *2010 Recommended Decision*, 25 FCC Rcd at 15626-27, para. 79.

[149] *Id. See, e.g.*, Assurance Wireless Lifeline Program, Program Description, http://www.assurancewireless.com/Public/MorePrograms.aspx (last visited Mar. 1, 2011); SafeLink Wireless, Lifeline/SafeLink Fact Sheet, https://www.safelinkwireless.com/EnrollmentPublic/benefits.aspx (last visited Mar. 1, 2011).

[150] *2010 Recommended Decision*, 25 FCC Rcd at 15626-27, para. 79.

[151] *See id.*

[152] We note that while a consumer may obtain Link-Up support for service installation, the fund only pays half of that charge, up to $30. If, for instance, the carrier were to charge $60 to initiate service, the consumer would be paying $30 and the fund would be paying $30.

require that the basic local residential rate for Tier 4 subscribers (*i.e.*, eligible low-income households residing on Tribal lands) may not fall below $1 per month.[153] We have learned anecdotally that some carriers do not currently collect the $1 from their Tribal customers. While the Commission's current rules specify what the carrier must charge the Tribal subscriber, they do not explicitly require the ETC to collect such amounts, thereby allowing ETCs to waive the $1 per month fee.[154]

91. If we adopt a proposal to require all ETCs to collect a minimum monthly fee from subscribers, we seek comment on whether to amend section 54.403(a)(4)(i) of the Commission's rules to specifically require a $1 monthly payment to be provided by each participating household to their ETC. Would this proposal, if adopted, adequately balance our objective of ensuring affordable service for eligible Tribal consumers while also guarding against waste, fraud, and abuse in the Lifeline program?

92. How would any of these proposals impact subscribership for low-income households on Tribal lands, which continue to lag significantly behind subscribership for the nation as a whole?

F. De-Enrollment Procedures

93. We propose rules requiring ETCs to de-enroll their Lifeline customers or households from the program under specified circumstances. Specifically, we propose to require ETCs to de-enroll their Lifeline subscribers when: (1) the subscriber is receiving duplicate support and fails to select one ETC in the allotted time after being notified of a duplicate claim; (2) the subscriber does not use his or her Lifeline-supported service for 60 days and fails to confirm continued desire to maintain the service; or (3) the customer does not respond to the eligibility verification survey. Under our proposed rules, the subscriber would receive notice that they could be de-enrolled from the program if they did not take action by a specified date. Should that time frame be 60 days?

94. Some ETCs have argued that section 54.405(d) of our rules requires that they give customers 60-days' notice prior to terminating their Lifeline benefits.[155] In addition, some state laws may require similar notice provisions.[156] The notice provisions currently set forth in section 54.405(d) of our rules are tied to consumer eligibility for Lifeline, and are not applicable to situations involving subscriber non-responsiveness as a result of a duplicate claim or non-usage of the Lifeline service. For administrative simplicity, should the same time frame be adopted for mandatory de-enrollment in the circumstances described above, or should we adopt a shorter period, such as de-enrollment within a 30-day period? We seek comment on our proposal to require ETCs to de-enroll Lifeline subscribers involved in the three scenarios described above. Would a shorter period be consistent with specific state notification requirements that may exist in non-default states? To the extent that commenters object to our proposal for mandatory de-enrollment, they should offer specific alternative solutions to protect the fund against waste, fraud, and abuse.

G. Audits

95. *Background.* Audits are an essential tool for the Commission and USAC to ensure program integrity and to detect and deter waste, fraud, and abuse. Commission rules authorize USAC to conduct audits of carriers that receive USF monies, and to suspend payments in situations where the carrier has failed to provide adequate verification for those discounts.[157] The 2008 FCC-USAC

[153] 47 C.F.R. § 54.403(a)(4)(i).

[154] *See* 47 C.F.R. § 54.403(a)(4).

[155] *ETC Duplicate Letter* at 5.

[156] *Id.*

[157] 47 C.F.R. § 54.707.

Memorandum of Understanding requires USAC to conduct audits, including audits of Fund beneficiaries,[158] in accordance with generally accepted government auditing standards, as required by section 54.702(n) of our rules.[159] USAC's audit program consists of audits by USAC's internal audit division staff as well as audits by independent auditors under contract with USAC.[160]

96. In a 2009 Executive Order regarding Improper Payments Information Act (IPIA) of 2002, President Obama stated that when making payments to program beneficiaries, federal government agencies "must make every effort to confirm the right recipient is receiving the right payment for the right reason at the right time."[161] Consistent with this directive and guidance from the Office of Management and Budget, in 2010 the Commission directed USAC to implement a new initiative, Payment Quality Assurance, to improve both the IPIA assessment program and compliance audit programs of the Universal Service Fund. For the low-income program alone, the FCC directed USAC to undertake 600 IPIA assessments (Payment Quality Assurance or PQA assessments) and 48 compliance audits (Beneficiary/Contributor Audit Program or BCAP audits).[162] USAC has already initiated 11 Lifeline and

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[158] *See* Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company, at 7 (Sept. 9, 2008) (*2008 FCC-USAC MOU*), *available at* http://www.fcc.gov/omd/usac-mou.pdf; *see also* Letter from Dana R. Shaffer, Deputy Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company (dated Oct. 13, 2010), *available at* http://www.fcc.gov/omd/usac-letters/2010/101310CPA-USAC.pdf.

[159] 47 C.F.R. § 54.702(n).

[160] In addition, in the past, the Commission's OIG has conducted audits of USF program beneficiaries. *See* Office of Inspector General, Semiannual Report to Congress, October 1, 2009 through March 31, 2010 at 17-20. In a February 12, 2010, letter to USAC, OMD directed USAC to separate its two audit objectives into distinct programs – one focused on Improper Payments Information Act ("IPIA") assessment and the second on auditing compliance with all four USF programs. Improper Payments Information Act of 2002, Pub. L. No. 107-300, 116 Stat. 2350 (2002). In addition to providing guidance on the implementation of the IPIA assessment program and compliance audit program, the letter informed USAC that OMD would assume responsibility for oversight of USAC's implementation of both programs. Letter from Steven Van Roekel, Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company (dated Feb. 12, 2010), *available at* http://www.fcc.gov/omd/usac-letters/2010/021210-ipia.pdf.

[161] President Obama further emphasized that the federal government must intensify efforts to eliminate payment error while "continuing to ensure that Federal programs serve and provide access to their intended beneficiaries." Executive Order No. 13,520, 74 Fed. Reg. 62,201 (Nov. 20, 2009) (IPIA Executive Order); Letter from Steven Van Roekel, Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company (dated Feb. 12, 2010) (*FCC IPIA Letter*), *available at* http://www.fcc.gov/omd/usac-letters/2010/021210-ipia.pdf; Letter from Steven Van Roekel, Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company (dated Oct. 13, 2010), *available at* http://www.fcc.gov/omd/usac-letters/2010/101310CPA-USAC.pdf.

[162] *FCC IPIA Letter*; OFFICE OF MGMT. & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, OMB CIRCULAR A-123, MANAGEMENT'S RESPONSIBILITY FOR INTERNAL CONTROL (2004). The Compliance Audit program is known as Beneficiary/Contributor Compliance Audit Program The IPIA assessment program was developed with the following objectives: (1) separately cover all four USF programs; (2) measure the accuracy of the Administrator's payments to program applicants; (3) evaluate the eligibility of program applicants who have received payments; (4) include high-level testing of information obtained from program participants; and (5) tailor scope of procedures to ensure reasonable cost while meeting IPIA requirements for sample size and precision. The compliance audit program was developed with the following objectives: (1) cover all four programs and contributors; (2) tailor audit type and scope to program risk elements, size of disbursement, audit timing and other specific factors; (3) keep costs reasonable in relation to overall program disbursements, amount disbursed to beneficiary being audited, and USF administrative costs; (4) spread audits throughout the year; and (5) retain capacity and capability for targeted and risk-based audits. *See* FCC IPIA Letter at 2, 4.

Link Up BCAP compliance audits in 2011.

97. *Discussion.* Waste, fraud, and abuse in the universal service program jeopardizes the availability of funds for supported services and imposes unjustifiable costs on carriers and ratepayers. We therefore seek to ensure there is a focused and effective system for identifying and deterring program abuse. We seek comment on ways to improve the current low-income audit program in light of growing concerns about such issues as duplicate payments and consumer ineligibility.[163] In particular, we seek comment on ways to improve the audit process to reduce improper payments and assess risks. In doing so, how can audits be targeted to better uncover the scope of errors associated with improper payments? What additional measures should be taken to mitigate the potential for program violations?[164] Are there additional measures or incentives, beyond those that currently exist, that we should implement to encourage people to report abuses? Should we impose additional penalties, beyond de-enrollment from the program, to discourage program abuse?

98. With the growth of newly designated ETCs in a number of states, there may be a need for a more rigorous audit program to provide assurance that new participants have established adequate internal controls to meet their obligations. For that reason, we propose that all new ETCs be audited after the first year of providing Lifeline-supported service. We seek comment on the appropriate geographic scope of the initial audit. How should such audits be designed to ensure that any problem areas are easily and thoroughly identified? Most audits examine an ETC's compliance with a wide variety of Commission requirements. Should initial audits focus on a smaller number of more important requirements, and if so, which ones? Although we seek comment on more rigorous, focused audits for new program participants, we note that we will also continue to direct USAC to conduct random audits to ensure ongoing compliance with our rules.[165]

99. We also seek comment on how to improve the Commission's directive to USAC to establish a systematic approach to assessing internal controls and learning from audit findings.[166] For example, we propose that negative audit findings above a specified dollar threshold, or impacting a specific percentage of an ETC's Lifeline customers, trigger shorter intervals between audits, an expanded audit for the company at issue, and/or an additional audit the following year in the relevant study area. What should that dollar threshold be? Would the cost associated with such audits outweigh the benefits that would accrue? What follow-up should the Commission require of USAC in light of negative Lifeline/Link Up audit findings?

100. We also seek comment on appropriate Commission responses to multiple findings of non-compliance, including repeated non-compliance above the specified thresholds or multiple findings

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[163] The 2010 GAO Report also expressed concern about the increased risk of waste, fraud, and abuse due to consumers simultaneously receiving Lifeline discounts on both a wireline and wireless phone. 2010 GAO REPORT at 35.

[164] Whistleblower Protection Act of 1989, Pub. L. No. 101-12, 103 Stat. 16 (codified at 5 U.S.C. §§ 1211–1219, 1221, 1222, 3352).

[165] *See, e.g,*. 47 C.F.R. §§ 54.413(b), 54.417 (specifying recordkeeping requirements for ETCs seeking universal service Lifeline and Link Up reimbursement).

[166] Letter from Steven Van Roekel, Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company (dated Jan. 25, 2011), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0210/DA-11-128A1.pdf; Letter from Steven Van Roekel, Managing Director, Federal Communications Commission, to Scott Barash, Acting CEO, Universal Service Administrative Company (dated Oct. 13, 2010), *available at* http://www.fcc.gov/omd/usac-letters/2010/101310CPA-USAC.pdf.

of non-compliance with Lifeline or Link Up requirements in a single audit.

101. The Commission's rules already direct USAC to "suspend or delay discounts, offsets and support amounts provided to a carrier if the carrier fails to provide adequate verification of discounts, offsets and support amounts provided upon reasonable request."[167] Should we establish a threshold (either aggregate dollar amount or percentage of support payments) that would automatically result in a freeze on future payments from the program until the carrier remediates identified issues? Under what circumstances should we consider revoking an ETC's grant of forbearance or designation as an ETC? We seek comment on other consequences that should result from negative audit findings.

102. In 2005, the Commission sought comment on subjecting all USF recipients to independent audits, but ultimately did not adopt any such requirement.[168] In light of increased concerns about potential waste, fraud, and abuse in the program, we again seek comment on whether to require some or all ETCs in the program to engage an independent firm to assess compliance with the program's requirements. If we were to impose such a requirement, how often should we require the review (*e.g.*, annually, or every few years)? Should all ETCs that participate in the program be subject to the requirement, or only some? If we were to limit this requirement to only certain ETCs, what would be the appropriate criteria for imposing such a requirement? For example, we might impose the requirement on ETCs that have been found to have committed violations in the past, that receive more than a particular amount of program support, or that have experienced significant increases in program support. Audits paid for by the ETCs could create a self-policing environment that would guard against waste, fraud, and abuse, but would also impose an expense on providers. We seek comment on the advantages and disadvantages of such a system, and on the burden of such a requirement on different carriers, including small ETCs. Commenters should discuss whether a lack of negative audit findings, or alternatively, proof of resolution of all negative findings, should impact the scope or frequency of future audits. We also seek comment on what type of audit engagements should be required, if we were to adopt such a requirement. If we were to adopt such a requirement, we propose to mandate that covered ETCs provide audit reports to the FCC, USAC, and relevant states, and that the FCC and USAC should be deemed authorized users of such reports.

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[167] 47 C.F.R. § 54.707.

[168] In the *2005 Program Management NPRM*, the Commission sought comment on whether recipients of funds from any or all of the support mechanisms should be subject to an independent audit requirement that would be paid for by the recipients, and, if so, whether only recipients above a set amount of USF support in a given fiscal year should be subject to this requirement. *See Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*; *Federal-State Joint Board on Universal Service;*, *Schools and Libraries Universal Service Support Mechanism;*, *Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Lifeline and Link-Up*; *Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-6, 02-60, 03-109, CC Docket Nos. 96-45, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308, 11340, para. 77 (2005) *(2005 Program Management NPRM)*. The Commission also sought comment on the costs of such audits; the appropriate scope and methodology of targeted independent audits that would be performed at the recipients' expense; and whether, in the event that waste, fraud, or abuse was detected, recipients that were not required to pay for their audits should be required to reimburse USAC or the Commission for the cost of the audit, or to pay other penalties. *See id.* at 11340-41, para. 77. The Commission has previously required regulated entities to obtain an independent auditor to confirm compliance with statutory or regulatory obligations, such as our cost allocation rules and rules requiring the Bell Operating Companies to have separate affiliates upon entry into the long-distance marketplace.

V. CLARIFYING CONSUMER ELIGIBILITY RULES

A. One-Per-Residence

1. Background

103. As previously noted, the Commission has stated that eligible consumers may receive universal service low-income support for "a single line in their principal residence."[169] This requirement historically was intended to target support where it was needed most and to maximize the number of Americans with access to the telephone network. In practice, this requirement has been implemented by providing one Lifeline/Link Up discount per residential address. This practice reflects the fact that in the immediate wake of the 1996 Act, the program provided support predominantly for wireline service.

104. The Commission promulgated rules under the 1996 Act that enabled competitive wireless and wireline carriers to be designated as ETCs eligible for federal universal service support.[170] Since that time, the marketplace has changed significantly, with a wide array of wireline and wireless services that compete with traditional incumbent LECs. As of June 2010, 93 percent of Americans subscribed to wireless phone services,[171] and more than 25 percent of households were wireless-only.[172] This increase in wireless subscriptions comes in tandem with a rise in the telephone penetration rates among low-income consumers, many of whom use wireless service.[173] In recent years, the Commission and states have designated several wireless carriers as ETCs for the purpose of providing Lifeline support.[174] These designations have enabled carriers to provide a variety of competitive services to low-income consumers in several states. The emergence of competing carriers and multiple services has enhanced consumer choice, and led to an increase in the average number of monthly minutes included in a Lifeline wireless plan at no charge to the consumer, from about 60 minutes in 2008 to 250 minutes today.[175]

105. But the increasing availability of wireless Lifeline services has also made it more difficult to limit low-income support to a single line per residence. While a fixed wireline connection is often shared by all household residents, mobile service is more often used on an individual basis. It is now common for non-Lifeline consumers that can afford to do so to purchase both wireline and wireless telephone services, and each member of a residential household may have his or her own wireless phone.[176] With greater availability of services from wireless Lifeline providers comes increased

[169] *2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8306, para. 4; *Universal Service First Report and Order*, 12 FCC Rcd at 8957, para. 341.

[170] *See Universal Service First Report and Order*, 12 FCC Rcd at 8969-73, paras. 364-72; *infra* section IX.C (Eligible Telecommunications Carrier Requirements).

[171] *See* CTIA Quick Facts, http://www.ctia.org/media/industry_info/index.cfm/AID/10323 (last visited Mar. 1, 2011).

[172] *See* WIRELESS SUBSTITUTION SURVEY at 1.

[173] *See* WCB SUBSCRIBERSHIP REPORT at 1, Chart 4, Table 4; *see also supra* note 86 and paras. 26-27 (providing background information illustrating the growth in wireless penetration, particularly in low-income households).

[174] *See infra* section IX.C (eligible telecommunications carrier requirements).

[175] *Compare, e.g., TracFone Wireless, Inc.'s Petition for Waiver of 47 C.F.R. § 54.403(a)(1)*, CC Docket No. 96-45, at 9 (filed May 4, 2009) (noting that TracFone's past offerings of between 55 and 68 free minutes per month to Lifeline customers), *with* Letter from F.J. Pollak, President and Chief Executive Officer, TracFone Wireless, Inc., to Hon. Julius Genachowski, Chairman, Federal Communications Commission, CC Docket No. 96-45, at 1 (filed Aug. 30, 2010) (noting that TracFone now offers 250 free minutes per month to Lifeline customers).

[176] *See supra* note 86 (stating that nearly 60% of households have both a wireless and a wireline telephone).

likelihood that a residence may receive Lifeline-supported telephone service from multiple sources.[177] And carrier practices of providing handsets to program participants at no cost and marketing Lifeline-supported services under different trade names increases the likelihood that a household and even a particular individual may sign up for multiple Lifeline services. New service features, such as calling plans that include additional handsets at no additional charge, also present challenges for the application of our existing requirements.

2. Discussion

106. In this NPRM, we propose to adopt a one-per-residential address requirement in section 54.408 of our rules.[178] We seek comment on whether codifying this requirement as "one-per-residence" would aid in administration of the requirement by providing a bright line that could be determined by reference to external sources. The Commission has not codified any definition of a "household" for purposes of Lifeline and Link Up, and various qualifying programs may utilize different definitions of households. We also note that in other contexts, consumers seeking benefits from state or other federal assistance programs may undergo a more robust process to qualify for benefits, such as an interview by social service agencies to determine eligibility, which may provide an additional level of assurance that the applicant in fact complies with relevant program criteria. We seek to adopt a rule that provides a bright line that is easy for USAC and ETCs to administer.

107. The one-per-residential address rule that we propose to adopt is consistent with our existing single-line per residence requirement.[179] But some ETCs dispute the validity of the single-line-per residence limitation,[180] which raises concern that they are not adhering to an existing requirement that is designed to minimize waste, fraud and abuse; target support where it is needed most; and maximize the number of Americans with access to communications services. As noted above, it may be necessary for the Commission to take action on an interim basis while this proceeding is pending to address concerns with USAC reimbursing ETCs for duplicate claims.[181]

108. We understand that there may be situations – such as residents of commercially zoned buildings, those living on Tribal lands, and group living facilities – where application of the one-per-residential address rule may produce unintended consequences that would deprive deserving low-income consumers of the support that they otherwise would be entitled to. We encourage ETCs, Tribal Communities, the states and other interested parties to provide input on a rule that maximizes the number of Americans with access to communications services, but also protects the fund from waste, fraud and abuse.

109. We seek comment on how best to achieve the purposes for which the single line per residence requirement was designed. We propose to maintain this longstanding requirement, which

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[177] In 2008, the Commission first designated a wireless reseller as a limited ETC for the purpose of receiving Lifeline support. *See TracFone ETC Designation Order*, 23 FCC Rcd at 6206. That reseller, TracFone, offers handsets and wireless service at no cost to qualifying low-income households. Other ETCs have followed suit, and low-income households now benefit from a number of competitive offerings. *See, e.g., Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3381.

[178] Appendix A at 47 C.F.R. § 54.408.

[179] *See 2004 Lifeline and Link Up Order*, 19 FCC Rcd at 8306, para. 4 (specifying that support for Lifeline subscribers is for "a single telephone line in their principal residence"); *see also Universal Service First Report and Order*, 12 FCC Rcd at 8957, para. 341.

[180] *Petition for Reconsideration* (arguing that the Commission has never adopted a generally- applicable one-per-household rule).

[181] *See* discussion *supra* paras. 48-51.

balances our statutory obligation to ensure that low-income consumers have access to phone service at reasonable rates and to ensure that support is sufficient, but not excessive.[182] We seek comment below on how to define a "residential address" for the purposes of the Lifeline and Link Up programs. We also seek comment on how best to interpret the one-per-residential address restriction in light of current service offerings and in the context of group living arrangements or other situations that may pose unique circumstances."[183]

110. In addition, we seek input on whether a different approach would better serve the needs of low-income consumers in light of our statutory obligations, as well as the changing communications marketplace. We note that several commenters in the Joint Board proceeding suggested that the Lifeline/Link-Up program should provide support for one wireless service per eligible adult, rather than one service per residential address, with some suggesting that would be in keeping with the statutory principle that low-income consumers should have access to services that are reasonably comparable to the services enjoyed in urban areas.[184] This approach would take into account the fact that telephone use has changed since we first implemented the 1996 Act. Fifteen years ago, wireless service was not a mainstream consumer offering; today, 93 percent of the general population has wireless service.[185] At the same time, providing support to each low-income adult rather than to each residential address could significantly increase the size of the program. Would allowing support for one wireless subscription per eligible adult be inconsistent with our statutory obligation to ensure that support is sufficient, but not excessive?[186] We seek comment on whether the benefit that wireless service affords low-income consumers outweighs concerns associated with growth of the fund. If the funding dedicated to the program were capped, as discussed more fully below, a one-per-adult rule would likely mean that a much smaller benefit would be available to each program participant than under a one-per-residential address rule. We seek comment on these issues.

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[182] *See* 47 U.S.C. § 254(b)(1), (3), (5).

[183] In an October 2009 Public Notice, the Bureau sought comment on how to apply the one-per-household rule in the context of group living facilities, such as assisted-living centers, Tribal residences, and apartment buildings. *See One-Per-Household" Public Notice*, 24 FCC Rcd at 12788; Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109 (filed July 17, 2009). We seek to refresh the record on the issues raised in the *One-Per-Household Public Notice* and seek comment on other related issues.

[184] *See, e.g.*, GCI TracFone One-Per-Household Clarification Comments at 7; SBI TracFone One-Per-Household Clarification Comments at 12 (stating that "[r]eplacing the one-per-household rule with eligibility standards that permit a single household to receive Lifeline assistance for more than one telephone, subject to appropriate certification requirements, would be more in keeping with the Commission's commitment and more reflective of the choices and opportunities that consumers expect in today's telecommunications marketplace"); MFY Legal Services TracFone One-Per-Household Clarification Comments at 2-3 (recommending that the Commission "change the identification of households within private apartment buildings so that each qualified household, including single individuals who may live with roommates, is able to apply for and receive Safelink service"); NASUCA TracFone One-Per-Household Clarification Comments at 2 (agreeing that the Commission "should revisit its position and clarify that a person or a family may constitute a household and need telecommunications service, without having a private home or apartment"); AT&T TracFone One-Per-Household Clarification Comments at 1-2 (stating that ETCs should be permitted to provide Lifeline services to any qualifying individual residing in a group living facility).

[185] *See* CTIA Quick Facts, http://www.ctia.org/media/industry_info/index.cfm/AID/10323 (last visited Mar. 1, 2011).

[186] *See* 47 U.S.C. § 254(b)(5).

a. Defining "Residence"

111. We propose a rule in section 54.408 to limit program support to a single subscription per U.S. Postal Service address, and seek comment on whether this approach would promote affordable access to telephone service consistent with the goals of section 254.[187] Under this proposal, where unrelated individuals and/or families share a U.S. Postal Service address, such individuals and/or families would be limited to one subscription for that "residence."[188] We seek comment on whether this approach best serves program goals. The program was established to ensure that all consumers, even those of limited means, would have a "lifeline"—a basic telephone service to connect them to the rest of society. Supporting one service at each residential address may effectively fulfill this goal, and may also help prevent waste and abuse of program resources. Moreover, this approach may be more administratively feasible than other options for defining who is eligible for support, such as family-based definitions that require an accurate determination of whether people living together are independent or related.

112. Pursuant to this proposal, upon receiving an application for Lifeline support, an ETC could use the U.S. Postal Service residential address as a proxy to determine whether the ETC is already providing Lifeline support to that address. If so, the ETC would reject the application for support. Additionally, as discussed *infra*, we propose to require that Lifeline subscribers initially certify when applying for service, and thereafter verify annually, that they are receiving support for only one line per residential address (defined for these purposes as all of the persons who reside at a unique U.S. Postal Service address).[189]

113. We recognize that there may be some residences for which there is no unique U.S. Postal Service address. For example, we understand that there are apartment buildings where the residents live separately, but their units lack distinct identifiers and mail is delivered to and distributed by a single point of contact such as the building manager. Similarly, when multiple persons or families share a residence, unique addresses may not be available. Customers in rural areas may share a rural route address. We seek comment on what actions could be taken in such situations to ensure that Lifeline and Link Up benefits are available to eligible consumers. Is there other information that a carrier could collect to verify that the residence does not already receive support from the program? Alternatively, if one subsidized service were available for such locations, would that satisfy the congressional goal of ensuring affordable access to telephone service?

114. As noted above, some customers rely on a P.O. Box rather than a U.S. Postal Service residential address. How should we determine eligibility in those situations? Should we require ETCs to collect additional verifying information, and if so, what?

115. Our rules also limit support to the subscriber's principal residence.[190] We seek comment on how to ensure that a subscriber does not obtain support at more than one location. We propose that each subscriber provide unique identifying information (as discussed in Section IV) to prevent the same subscriber from receiving support at multiple locations. We seek comment on this proposal. We also seek comment on whether we should require subscribers to certify that the address provided is their

[187] *See* Appendix A, 47 C.F.R. § 54.408(a)(1).

[188] *See id.* To the extent that the Lifeline/Link Up provider could demonstrate that an applicant possesses a distinct unit number, as would be the case for individuals residing in an apartment building, for example, this would be sufficient to establish a unique address.

[189] *See infra* paras. 167-69 (One-per-residential address certification and verification).

[190] *See* Appendix A, 47 C.F.R. § 54.408(a)(2).

principal residence, in order to receive Lifeline and Link Up support.[191]

116. We seek comment on whether our U.S. Postal Service address-based proposal should be modified to accommodate different types of living situations, and if so, how. For example, should the proposed definition of "residential address" be modified to accommodate certain living arrangements? Should there be an exception for unrelated adult roommates or multiple families sharing a residence? Should we allow more than one discount per residence in the case of multi-generational families, for example if the low-income family includes an eligible adult child or elderly relative? Commenters that propose a different definition of "residence" from the one we propose above, or exceptions to that definition, should explain how the Commission could ensure, in administratively feasible ways, that support is being provided appropriately, however that term is defined.

b. Application of the One-Per-Residence Rule to Commercially Zoned Buildings

117. Although the Commission's rules provide low income support for residential customers, the Commission has learned of instances where otherwise eligible applicants have been denied Lifeline and Link Up service because they live in facilities that are zoned for commercial, rather than residential use. This may occur, for example, when individuals reside in single-room occupancy buildings, lodging houses, rooming houses, shelters, and other group quarters.[192] This appears to be a particular problem in urban areas.[193]

118. We seek comment on how we can ensure that consumers have access to low-income support even if they reside in a commercially-zoned location. We note that commercial residences tend to be group living facilities rather than individual residences. If the Commission adopted special rules for group living facilities, would those rules resolve concerns about providing support to eligible subscribers who live in commercially-zoned areas? Are there additional steps we should take to verify that Lifeline and Link Up subsidies are not being provided to commercial entities?

c. Application of the One-Per-Residence Rule in Tribal Communities

119. On some Tribal lands, several households may occupy a single housing unit.[194] We seek comment on whether we should adopt a special definition of "residence" on Tribal lands that will ensure that Lifeline and Link Up service is provided to eligible consumers. For example, to the extent there are multi-generational families sharing a residence in Tribal communities, should there be an exception to our proposed one-per-residence rule? How can the Commission ensure that the program does not provide duplicative support to households on Tribal lands? In order to craft a rule that appropriately takes into account conditions on Tribal lands, we seek additional information about housing arrangements in Tribal areas.

120. Some commenters responding to the *"One-Per-Household" Public Notice* state that residents of Tribal Lands frequently lack unique U.S. Postal Service addresses, and instead receive mail at

[191] *See id.*

[192] *See, e.g.*, Manhattan Legal Services TracFone One-Per-Household Clarification Comments at 2; NCLC TracFone One-Per-Household Clarification Comments at 4-5; NNEDV TracFone One-Per-Household Clarification Reply Comments at 2; MDTC TracFone One-Per-Household Clarification Reply Comments at 3 n.9.

[193] *See* Manhattan Legal Services TracFone One-Per-Household Clarification Comments at 2; NCLC TracFone One-Per-Household Clarification Comments at 4-5.

[194] *See, e.g.*, NCLC TracFone One-Per-Household Clarification Reply Comments at 6; SBI TracFone One-Per-Household Clarification Comments at 6, 10.

communal P.O. boxes.[195] We thus seek comment on how to apply the "one-per-residence" rule to Tribal lands if we were to adopt the proposal generally to define residential address on the basis of a U.S. Postal Service address. Given the very low telephone penetration rate on Tribal lands, we do not want our rules to impose barriers to consumers or households living on Tribal lands that are eligible for, and desperately need, Lifeline discounts. At the same time, we must act as responsible stewards of the Fund. If the Commission were to exempt Tribal members from providing a unique U.S. Postal Service address, what measures should the Commission adopt to guard against the possibility of waste, fraud, and abuse?

d. Ensuring Access for Residents of Group Living Quarters

121. Some commenters have suggested that the Commission should consider how better to ensure that the program is effectively serving low-income residents of group living quarters, such as residential facilities for seniors or for victims of domestic violence.[196] We seek comment on how eligibility should be defined for residents of group living quarters, including the effects on eligibility when a resident moves out of a group living facility, and what measures are necessary to prevent waste, fraud, and abuse.[197]

122. Under the proposed rule, related or unrelated, living together at a single postal address, residents of a group living facility—which could be dozens or even hundreds of individuals—would be eligible for only a single Lifeline supported service. Is this approach adequate to ensure availability of basic communications services to all Americans, including low-income consumers, as section 254 requires? If not, how should the program support service to low-income consumers residing in group living facilities? Should the program provide support to each separate and unrelated individual or family (*e.g.*, a married couple living together at a nursing home) living in group facilities?

123. Alternatively, should we create an exception to our proposed one-per-residence rule for eligible consumers in a group living facility to obtain Lifeline or Link Up service?[198] Is there an

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[195] *See* SBI TracFone One-Per-Household Clarification Comments at 4-5.

[196] *See, e.g.*, Florida PSC & OPC TracFone One-Per-Household Clarification Comments at 3; NCLC TracFone One-Per-Household Clarification Comments at 5; HAP TracFone One-Per-Household Clarification Comments at 2; Manhattan Legal Services TracFone One-Per-Household Clarification Comments at 1-2; MDTC TracFone One-Per-Household Clarification Reply Comments at 4; NASUCA TracFone One-Per-Household Clarification Comments at 2; SBI TracFone One-Per-Household Clarification Comments at 2; TracFone TracFone One-Per-Household Clarification Reply Comments at 7; NNEDV TracFone One-Per-Household Clarification Reply Comments at 2; GCI TracFone One-Per-Household Clarification Comments at 6; AT&T TracFone One-Per-Household Clarification Comments at 1-2; MFY Legal Services TracFone One-Per-Household Clarification Comments at 2. The U.S. Census Bureau defines "group living quarters" as:

> [a] place where people live or stay, in a group living arrangement, that is owned or managed by an entity or organization providing housing and/or services for the residents. This is not a typical household-type living arrangement. These services may include custodial or medical care as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in group quarters are usually not related to each other.

2010 Decennial Census Local Update of Census Addressees (LUCA) Program, Frequently Asked Questions February 2008, www.census.gov/geo/www/luca2010/luca_faq.htm#WhatistheCensusBureaudefinitionofagroupquarters (last visited Mar. 2, 2011). Some examples of group quarters include: nursing homes; hospitals with long-term care facilities; dormitories for workers; religious group quarters; and shelters. *Id.*

[197] *2010 Recommended Decision*, 25 FCC Rcd at 15602, para. 12.

[198] *See, e.g.*, AT&T TracFone One-Per-Household Clarification Comments at 1-2; Florida PSC & OPC TracFone One-Per-Household Clarification Comments at 3-4; GCI TracFone One-Per-Household Clarification Comments at 6; Manhattan Legal Services TracFone One-Per-Household Clarification Comments at 1-2; MDTC TracFone One-
(continued….)

administratively feasible way to approach this challenge that also provides protections against waste, fraud, and abuse? For instance, should we require the administrator of group living facilities to certify to ETCs and/or USAC the number of separate and unrelated individuals or families in the facility? In that situation, the facility would be responsible for applying for Lifeline/Link Up support on behalf of its residents.[199] Under this approach, how could our rules ensure verification of the income eligibility of the subscribers for which a group facility is seeking support? Should the facility be required to provide the ETC documentation of the residents' eligibility?

124. Should we require that consumers residing in group facilities provide certification from facility staff that corroborates applicants' residence in a group living facility, as well as information about the number and types of persons served by the facility? Should the Commission set different eligibility criteria for permanent and temporary residents of group living facilities?[200]

125. We seek comment on the feasibility of making Lifeline funding available to agencies or non-profit organizations that are able to provide communications services to residents of group living facilities.[201] As the Joint Board acknowledged, such institutions do not qualify as ETCs eligible for support, and we therefore seek comment on the application of section 254(e) of the Act, which limits the recipients of universal service support to ETCs.[202] If funding were made available to such organizations, what if any additional measures would be needed to guard against waste, fraud, and abuse? For example, in a situation where the applicant lacks a residential or mailing address, how would the ETC verify the customer's initial and ongoing eligibility for Lifeline services?

B. Tribal Lifeline Eligibility

126. It is well established that federally recognized Tribes have sovereignty, and exercise jurisdiction over their members and territory with the obligation to "maintain peace and good order,

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(Continued from previous page)
Per-Household Clarification Reply Comments at 4; NASUCA TracFone One-Per-Household Clarification Comments at 2; NCLC TracFone One-Per-Household Clarification Comments at 8; NNEDV TracFone One-Per-Household Clarification Reply Comments at 2; TracFone TracFone One-Per-Household Clarification Reply Comments at 7; SBI TracFone One-Per-Household Clarification Comments at 12.

[199] *See, e.g.*, City of Cambridge – CoC TracFone One-Per-Household Clarification Comments at 3 (proposing that a group living quarters would apply for a "waiver" of the one-per-household policy by filing a form with ETCs establishing its group facility status. Thereafter, "residents at the named facility would be entitled to receiving Lifeline telephone service, as if they had their own private residence."); *cf.* Ohio Commission TracFone One-Per-Household Clarification Comments at 10 (proposing that the FCC consider providing each group living facility with a phone with a specified number of minutes per month to be allocated between the residents of the facility).

[200] *See, e.g.*, Benton Joint Board Comments at 6; Consumer Advisory Committee Joint Board Reply Comments at 9-10; Ohio Commission Joint Board Comments at 7; Smith Bagley Joint Board Comments at 4; Smith Bagley Joint Board Reply Comments at 8; TracFone Joint Board Comments at 4-5. Certain commenters acknowledged the unique challenges faced by residents of group housing. Benton, the Consumer Advisory Committee, and Consumer Groups assert that low-income support should be extended to residents of group housing, though not necessarily automatically. Benton Joint Board Comments at 6; Consumer Advisory Committee Joint Board Reply Comments at 9; Consumer Groups Joint Board Comments at 12-14; Consumer Groups Joint Board Reply Comments at 5; FPSC Joint Board Comments at 4.

[201] *2010 Recommended Decision* at 15602, para. 12. Pursuant to section 254(e) of the Act, only eligible telecommunications carriers may receive universal service funding. 47 U.S.C. § 254(e). Thus, to the extent that we adopt a proposal permitting non-profit group living facilities to apply for Lifeline and Link Up discounts on their residents' behalf, Lifeline and Link Up support could be distributed to the eligible telecommunications carrier which, in turn, would provide billing discounts to the group living facility.

[202] *See* 47 U.S.C. § 254(e).

improve their condition, establish school systems, and aid their people" within their jurisdictions.[203] In 2000, the Commission formally recognized Tribal sovereignty in its *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*.[204] The federal government also has a trust relationship with Indian Tribes, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions.[205] Consistent with this relationship, the Commission, in its June 2000 *Tribal Order*, adopted measures to promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native Tribal communities.[206] Accordingly, in the *Tribal Order*, the Commission modified its rules to create enhanced Lifeline and Link Up programs intended to provide access to telecommunications services for low-income consumers living on Tribal lands.[207]

127. *Income-based eligibility*. The Commission's current rules regarding Tribal eligibility for Lifeline support have been subject to differing interpretations. Specifically, ETCs, USAC, and Tribal groups have indicated there has been inconsistency and confusion among federal default and non-default states regarding whether residents of Tribal lands may qualify for participation in the program based on income, even though there is language in Commission orders so indicating.[208]

128. We propose to revise sections 54.409(a) and 54.409(c) to more clearly reflect that residents of Tribal lands are eligible for Lifeline and Link Up support based on: (1) income; (2) participation in any Tribal-specific federal assistance program identified in our rules; or (3) any other program identified in subsection 54.409(b) of our Lifeline and Link Up rules.[209] We seek comment on

[203] *Policies to Promote Rural Radio Service and to Streamline Allotments and Assignment Procedures,* MB Docket No. 09-52, First Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 1583, 1585 (2010) (*Rural Radio Order*) (internal citations omitted).

[204] *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080 (2000) (*Tribal Policy Statement*).

[205] *See, e.g., Seminole Nation v. United States*, 316 U.S. 286, 297 (1942) (citing *Cherokee Nation v. State of Georgia*, 30 U.S. 1 (1831)); *United States v. Kagama*, 118 U.S. 375 (1886); *Choctaw Nation v. United States*, 119 U.S. 1 (1886); *United States v. Pelican*, 232 U.S. 442 (1914); *United States v. Creek Nation*, 295 U.S. 103 (1935); *Tulee v. State of Washington*, 316 U.S. 681 (1942); The Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 450 (2006).

[206] *See generally Tribal Order*.

[207] *See Tribal Order*, 15 FCC Rcd at 12219-12252, paras. 20-85. Enhanced Lifeline support, otherwise known as Tier 4 support, provides up to an additional $25 per month in federal Lifeline support to eligible low-income consumers living on Tribal lands, as long as that amount does not bring the basic local residential telephone rate below one dollar. *See* 47 C.F.R. § 54.403(a)(4). Enhanced Link Up support provides up to an additional $70 in federal Link Up support to eligible low-income consumers living on Tribal lands. *See* 47 C.F.R. § 54.411(a)(3).

[208] *See* Letter from Melissa E. Newman, Vice President Federal Regulatory, Qwest Communications International, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 03-109 (filed Dec. 16, 2010) (Qwest Dec. 16, 2010 *Ex Parte* Letter); Letter from Darrell Gerlaugh, Board of Directors, Gila River Telecommunications, Inc., to Geoffrey Blackwell, Chief, Office of Native Affairs and Policy, Federal Communications Commission, WC Docket No. 03-109 (filed Feb. 24, 2011) (Gila River Feb. 24, 2011 *Ex Parte* Letter); Letter from Susie Allen, Member, Colville Business Council, The Confederated Tribes of the Colville Reservation, to Rebekah Bina, Attorney Advisor, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 03-109 (filed Feb. 25, 2011) (Colville Feb. 25, 2011 *Ex Parte* Letter). *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rule Making, CC Docket No. 96-45, 18 FCC Rcd 10958, 10970-71, paras. 23-24 (2003) (*Second Tribal Order*).

[209] *See* Appendix A, 47 C.F.R. § 54.409.

this proposal.

129. *Program-based eligibility*. Under section 54.409 of the Commission's rules, participation in the federal Food Stamp Program (or the Supplemental Nutrition Assistance Program (SNAP) as it is currently named), qualifies residents of Tribal lands for Lifeline/Link Up support.[210] The Lifeline/Link Up rules do not, however, grant eligibility based on participation in the Food Distribution Program on Indian Reservations (FDPIR), a federal program that provides food to low-income households living on Indian reservations, and to Native American families residing in designated areas near reservations and in the State of Oklahoma.[211] As discussed more fully below, eligible residents of Tribal lands for the purposes of the Lifeline/Link Up program are qualifying low-income households on a reservation, where "reservation" is defined as any federally-recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, and Alaska Native regions.[212]

130. The service and eligibility criteria for FDPIR are similar to those of SNAP, and are based on income levels that must be recertified on a periodic basis.[213] A household may not participate in both FDPIR and SNAP, and any given reservation could have certain households participating in FDPIR and others participating in SNAP.[214] Approximately 276 tribes currently receive benefits under FDPIR,[215] suggesting that there are households on Tribal lands that are not be served by the Lifeline/Link Up program simply because they have chosen to receive FDPIR benefits instead of SNAP benefits. Further, we understand that Tribal elders, a particularly vulnerable population, often seek FDPIR benefits rather than SNAP benefits.[216] As such, allowing residents on Tribal lands to qualify for low-income support based on participation in FDPIR is consistent with the purpose of the current tribal eligibility criteria, furthers the goal of providing access to telecommunications services by low-income households on Tribal lands, and the goal of targeting those in the greatest need.

131. Accordingly, we propose to amend section 54.409(c) of the Commission's rules to allow program eligibility for residents of Tribal lands participating in FDPIR.[217] We seek comment on this proposal. We also seek comment on whether there are any other federally- or Tribally-administered, income-based assistance programs, such as those focused on the elderly, which should be included in our

[210] *See* 47 C.F.R. § 54.409. *See also* United States Department of Agriculture, Supplemental Nutrition Assistance Program (SNAP), Eligibility Criteria, http://www.fns.usda.gov/snap/applicant_recipients/eligibility.htm (last visited Mar. 4, 2011).

[211] *See* United States Department of Agriculture, FD Programs, About FDPIR, http://www.fns.usda.gov/fdd/programs/fdpir/about_fdpir.htm (last visited Dec. 20, 2010); *see also* Food Distribution Fact Sheet, October 2010, *available at* http://www.fns.usda.gov/fdd/programs/fdpir/pfs-fdpir.pdf (last visited Mar. 3, 2011).

[212] *See* 47 C.F.R. § 54.400(e); *see also supra* paras. 129 (discussing the definition of Tribal lands).

[213] Food Distribution Fact Sheet, October 2010, *available at* http://www.fns.usda.gov/fdd/programs/fdpir/pfs-fdpir.pdf (last visited Mar. 3, 2011); *see also* FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., FOOD DISTRIBUTION ON INDIAN RESERVATIONS, NET MONTHLY INCOME STANDARDS, FNS HANDBOOK EXHIBIT M (2010), http://www.fns.usda.gov/fdd/hdbks-instruct/FNS501-Changes/ExhibitM_FY2011.pdf; *see also* United States Department of Agriculture, Food & Nutrition Service, Supplemental Nutrition Assistance Program, Eligibility, http://www.fns.usda.gov/snap/applicant_recipients/eligibility.htm (last visited Mar. 2, 2011).

[214] Gila River Feb. 24, 2011 *Ex Parte* Letter.

[215] *See supra* note 211 (Food Distribution Fact Sheet); *see also* U.S. Department of the Interior, Bureau of Indian Affairs, What We Do, http://www.bia.gov/WhatWeDo/index.htm (last visited Mar. 2, 2011).

[216] Colville Feb. 25, 2011 *Ex Parte* Letter.

[217] *See* Appendix A, 47 C.F.R. § 54.409.

program eligibility rules for residents of Tribal lands.

132. *Location-based conditions.* In the *Tribal Order*, the Commission defined the terms "Tribal lands," "reservation," and "near reservation" for the purposes of establishing eligibility for the Tribal Lifeline and Link-Up programs.[218] Specifically, the Commission modified its rules to provide support to individuals residing on "any federally recognized Indian [T]ribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims settlement Act (85 Stat. 688), and Indian allotments,"[219] as well as those residing in "those areas or communities adjacent or contiguous to reservations that are designated as such by the Department of Interior's Commissioner of Indian Affairs, and whose designations are published in the Federal Register."[220]

133. In its August 2000 *Tribal Stay Order and Further Notice*, however, the Commission stayed implementation of the Tribal Lifeline and Link Up programs as they applied to qualified low-income households "near reservations."[221] The Commission noted that, after its adoption of the definition of "Tribal lands" in the *Tribal Order*, it learned that the term "near reservation," as defined by the Bureau of Indian Affairs (BIA), might include "wide geographic areas that do not possess the characteristics that warranted the targeting of enhanced Lifeline and Link[-]Up support to reservations, such as geographic isolation, high rates of poverty, and low telephone subscribership."[222] Accordingly, in its *Tribal Stay Order and Further Notice* and its May 2003 *Second Tribal Order*, the Commission sought comment on how to identify geographic areas adjacent to reservations that share similar characteristics with the reservations.[223] Since then, the Commission has not taken further action regarding the definition of "near reservation," and currently provides enhanced low-income support only to those living on, not near, Tribal lands.

134. We now propose to amend section 54.400(e) of our rules to remove the term and definition of "near reservation," as its inclusion in the rules creates confusion.[224] We also propose to adopt a new rule section 54.402 to adopt a designation process for those Tribal groups and communities seeking designation as Tribal lands under the Commission's rules.[225] We seek comment on this proposal. The designation process we propose is consistent with the process recently proposed by the Commission in the *Rural Radio Service Second R&O*.[226] That Order addresses the definitions of "Tribal lands" and

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[218] *See Tribal Order*, 15 FCC Rcd at 12217-19, paras. 16-19; *see also* 47 C.F.R. § 54.400(e).

[219] *Tribal Order*, 15 FCC Rcd at 12218, para. 17 (defining "reservation").

[220] *Id.* (defining "near reservation").

[221] *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 17112, 17112-13, para. 1 (2000) (*Tribal Stay Order and Further Notice*).

[222] *Id.* at 17113, para. 3.

[223] *Id.* at 17114-15, paras. 5-6; *Second Tribal Order*, 18 FCC Rcd at 10974-77, paras. 33-38. In the *Second Tribal Order*, the Commission also declined to adopt changes to the definition of "reservation" made by the BIA, noting that "[t]o alleviate the potential for ongoing administrative uncertainty . . . any future modifications to the definition of 'reservation' or 'near reservation' will take effect in the context of the universal service programs only upon specific action by the Commission." *Second Tribal Order*, 18 FCC Rcd at 10967, para. 17.

[224] *See* Appendix A, 47 C.F.R. § 54.400(c).

[225] *See* Appendix A, 47 C.F.R. § 54.402.

[226] *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, MB Docket No. 09-52, FCC 11-28 at paras. 6-11 (rel. Mar. 3, 2011) (*Rural Radio Service Second R&O*).
(continued….)

"near reservation areas" for the purpose of determining whether a radio station application seeking to serve a Tribal community of license is a "licensable community" that qualifies for special consideration.[227] The Commission adopted a process whereby an applicant seeking to establish eligibility may submit any probative evidence of a connection between a defined community or area and the Tribe itself.[228] We propose to adopt a similar process for Tribal groups and communities seeking to receive Lifeline and Link Up support, but whose land is not defined by section 54.400(e).[229] Use of such a process would serve the public interest by affording flexibility to Tribes in non-landed situations, particularly given that the circumstances of such Tribes are so varied.

135. We propose to delegate authority to resolve such designations to the Wireline Competition Bureau. We propose that such a request to designate an area as a Tribal land for purposes of Lifeline and Link Up should be formally requested by an official of a federally recognized Tribe who has proper jurisdiction. The request should explain why the communities or areas associated with the Tribe do not fit the definition of Tribal lands set forth in the Commission's Lifeline/Link Up program rules, but which are regions so Native in their character or location, as to support the purpose of providing enhanced Tribal Lifeline/Link Up program support.[230] A showing should also detail how providing program support to the area would aid the Tribe in serving the needs and interests of its citizens in that community, and thus further the Commission's goals of providing Tribal support. Most probative would be evidence that a Tribe delivers services to the area at issue. However, the Tribe could offer other evidence, including the federal government's provision of services to Tribal members in the identified area. Probative evidence might also include a showing that the Census Bureau defines the area as a Tribal service area that is used by agencies like the Department of Housing and Urban Development.[231] Further, persuasive evidence of a nexus between a community and a Tribe might also include showings that a Tribal government has a defined seat, such as a headquarters or office, in the area, combined with evidence that Tribal citizens live and/or are served by the Tribal government in the area at issue. A Tribe might also provide evidence that a majority of members of the Tribal council or board live within a certain radius of the area. An applicant might also show that more than 50 percent of Tribal members live exclusively in the geographical area. Additionally, tribes might provide other indicia of a connection, such as Tribal institutions (*e.g.*, hospitals or clinics, museums, businesses) or activities (*e.g.*, conferences, festivals, fairs). We seek comment on any other factors that could help determine whether a geographical area is predominantly Tribal, such that low-income residents in the area should receive the benefits of enhanced Tribal program support.

136. In addition to the showing required, it is important that an applicant seeking to take advantage of enhanced Tribal program support set forth a clearly defined area to be covered. The need for such a demonstration is in line with the purposes of enabling Tribes to serve their citizens, to perpetuate Tribal culture, and to promote self-government. In evaluating such requests, we propose to delineate the "Tribal Lands" equivalents as narrowly as possible and view most favorably proposals that

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[227] *Rural Radio Service Second R&O* at paras. 6 n. 13, 7 n.19. The Media Bureau's decision to adopt a waiver process is informed by the comments of a few parties. *Id.* at para. 8; *see also* Koahnic Broadcast Corporation Comments, MB Docket No. 09-52 (filed May 4, 2010); Native Public Media & National Congress of American Indians Comments, MB Docket No. 09-52 (filed May 4, 2010) (NPM/NCAI Comments); Catholic Radio Association Comments, MB Docket No. 09-52 (filed May 4, 2010).

[228] *Rural Radio Service Second R&O* at paras. 9-10.

[229] See Appendix A, 47 C.F.R. § 54.400(c).

[230] *See* Appendix A, 47 C.F.R. §§ 54.403(a)(4), 54.409(c).

[231] *See* NPM/NCAI Comments at 8-10.

describe narrowly defined Tribal lands, to enable the provision of services to Tribal citizens rather than to non-Tribal members living in adjacent areas or communities. We seek comment on this proposal.

137. *ETC Designation on Tribal lands.* Additionally, we acknowledge that carriers serving households residing on Tribal lands could benefit from greater clarity regarding the ETC designation process for Tribal lands. However, as this issue has broader applicability beyond just the Lifeline/Link Up program, the corresponding issues and request for comment are addressed in the Office of Native Affairs and Policy's *Native Nations Notice of Inquiry.*[232] For example, the *Notice of Inquiry* seeks comment on how specific an ETC designation including Tribal lands should be, particularly for carriers seeking designation for the sole purpose of participating in the Lifeline program.[233] The *Notice of Inquiry* also seeks comment on the nature of consultation with Tribal governments that should be included in the ETC designation process and whether carriers and Tribal governments should be required to file a proposed plan to serve with the Tribal lands.[234] Finally, the *Notice of Inquiry* seeks comment on whether varying amounts of Lifeline support should be available on Tribal lands.[235] We also seek comment on these issues and on the Lifeline program proposals contained in the *Native Nations Notice of Inquiry.*

138. *Self-Certification of Tribal land residence.* Section 54.409(c) of the Commission's rules require that ETCs offering Lifeline services to residents of Tribal lands must obtain the consumer's signature on a document certifying that the consumer receives benefits from at least one of the qualifying programs and lives on a reservation.[236] On April 25, 2008, Qwest Communications International Inc. (Qwest) filed a request for review of certain USAC audit findings.[237] The USAC audit found that, among other things, Qwest provided Tier 4 support for subscribers who were not residing on eligible Tribal lands and did not provide Tier 4 support to subscribers who were eligible residents of Tribal lands.[238] Qwest asked the Commission to find that USAC erred when it concluded that Qwest is inappropriately seeking enhanced Lifeline support for customers that do not reside on Tribal lands.[239] Qwest argued that it has fulfilled its obligation to ascertain whether a customer lives on a reservation by obtaining a signed certifications stating that the customer lives on a reservation.[240] USAC responded that Qwest should establish additional controls.[241] The Commission sought comment on the Qwest Petition in 2008.[242]

[232] *See Improving Communications Services for Native Nations,* CG Docket No. 11-41, Notice of Inquiry, FCC 11-30 at paras. 23-32 (rel. Mar. 4, 2011) (*Native Nations NOI*).

[233] *Native Nations NOI* at paras. 28-29.

[234] *Native Nations NOI* at paras. 30.

[235] *Native Nations NOI* at paras. 32.

[236] *See* 47 C.F.R. § 54.409(c).

[237] *Request for Review by Qwest Communications International, Inc. of the Decision of the Universal Service Administrator,* WC Docket No. 03-109 (filed Apr. 25, 2008) (*Qwest Petition*).

[238] *See Qwest Petition* at Attachment 3 (Results of Low Income Limited Review of Qwest Colorado, at 10-11, Finding 4) and Attachment 4 (Results of Low Income limited Review of Qwest Idaho, at 11-12, Finding 4).

[239] *Qwest Petition* at 6-9.

[240] *Id.*

[241] *Qwest Petition* at Attachment 3 (Results of USAC 2006 Low Income Limited Review of Qwest Colorado, Finding 4).

[242] *See Comment Sought on Qwest Request for Review of a Decision of the Universal Service Administrative Company,* WC Docket No. 03-109, Public Notice, 23 FCC Rcd 7845 (Wireline Comp. Bur. 2008) (*Qwest Public Notice*).

139. As discussed above, Tribal land addresses are often not straightforward.[243] AT&T and the US Telecom Association (USTelecom) filed comments supporting Qwest, stating that the Commission did not intend ETCs to take additional steps beyond obtaining a self-certification, to determine whether an applicant lives on Tribal lands.[244] Alltel Communications, LLC (Alltel, which subsequently was acquired by Verizon), Rural Cellular Corporation (Rural Cellular), and Smith Bagley, Inc. (SBI) also filed reply comments supporting Qwest.[245] Alltel acknowledged that Tribal lands are historically underserved areas in which residents and experience very low telephone penetration rates.[246] Alltel argued that an increased burden on ETCs to verify Tribal residency would not improve service on Tribal lands, but would only serve to discourage ETCs from serving these areas as conducting additional verification procedures is very challenging due to the unique living arrangements and identification practices of many Tribes.[247] For example, the Rosebud Sioux Tribe acknowledged that there are no physical addresses on the Rosebud Indian Reservation.[248] Additionally, the Spirit Lake Tribe stated that all mail sent to the reservation is addressed to P.O. Boxes or General Delivery.[249]

140. We propose to amend section 54.409(c) of the Commission's rules to disallow self-certification of income or program eligibility for residents of Tribal lands receiving Lifeline/Link Up support, consistent with our proposal below to require all Lifeline/Link Up recipients to provide proof of income or participation in a qualifying program.[250] We propose to require a consumer receiving low-income support and living on Tribal lands to show documented proof of participation in an eligible program or eligibility based on income, like all other low-income consumers as there do not appear to be unique reasons why Tribal households should be exempt from a general requirement to produce documentation of qualification for program support. We seek comment on this proposal.

141. We do, however, recognize there may be challenges in verifying Tribal residency due to unique living arrangements on Tribal lands, and therefore maintain the self-certification requirement as to Tribal land residence.[251] We propose to clarify that receipt of self-certification of residence on Tribal lands, along with documentation of income or participation in an eligible program, is sufficient documentation for an ETC to provide enhanced Lifeline support. The current rules do not require the ETC to establish further verification processes or controls to ascertain that the customer is a Tribal

[243] *See* Tribal Addresses discussion *supra* at paras. 119-20.

[244] *See* AT&T Comments, WC Docket No. 03-109, at 2-4 (filed Jun. 16, 2008); United States Telecom Association Comments, WC Docket No. 03-109, at 7-9 (filed Jun. 16, 2008).

[245] *See* Alltel Communications, LLC Reply Comments, WC Docket No. 03-109 (filed Jul. 1, 2008) (Alltel Reply Comments); Rural Cellular Corporation Reply Comments, WC Docket No. 03-109, at 2-3 (filed Jul. 1, 2008) (Rural Reply Comments); Smith Bagley Reply Comments, WC Docket No. 03-109, at 2-3 (filed Jul. 1, 2008) (SBI Reply Comments).

[246] *See* Alltel Reply Comments. As of 2006, the telephone penetration rate on Tribal lands in the lower 48 states was about 67.9% and in Alaska Native villages was about 87%. *See* 2006 GAO REPORT; *see also* FEDERAL COMMUNICATIONS COMMISSION, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, TELEPHONE SUBSCRIBERSHIP ON AMERICAN INDIAN RESERVATIONS AND OFF-RESERVATION TRUST LANDS (2003).

[247] Alltel Reply Comments at 1, 3-4, Attachment (stating that multiple customers often identify a common billing address or P.O. Box which may be outside the reservation boundaries).

[248] *See* Alltel Reply Comments at Attachment.

[249] *See* Alltel Reply Comments at Attachment (this tribe also acknowledged that it does not have access to a 911 system).

[250] *See* Appendix A, 47 C.F.R. § 54.409(c).

[251] *See* Appendix A, 47 C.F.R. § 54.409(c)(2).

member or lives on Tribal lands before providing enhanced Lifeline support.[252] We seek comment on this proposed clarification.[253]

VI. CONSTRAINING THE SIZE OF THE LOW-INCOME FUND

142. *Background.* The Commission has a statutory obligation to create specific, predictable, and sufficient universal service support mechanisms.[254] As noted in the National Broadband Plan, unconstrained growth of the Universal Service Fund would jeopardize universal service by increasing the contribution burden on American consumers and businesses, thereby discouraging adoption and use of communications services.[255] Certain USF programs are capped, including the schools and libraries and rural health care support mechanisms.[256] With the implementation of the interim competitive ETC cap for the high-cost program in 2008, the only major components of the fund that remain uncapped are the low-income program and the interstate common line support mechanism in the high-cost program, which provided $1.7 billion in 2010 to rate-of-return carriers in rural, Tribal, and insular areas and has been growing. The *Connect America Fund Notice* sought comment on limiting the total size of the high-cost program and on capping interstate common line support.[257]

143. As noted above, the size of the low-income program has grown significantly in recent years, from a roughly inflation-adjusted $667 million in 2000 to $1.3 billion in 2010.[258] According to GAO's recent report, the low-income fund grew in 2009 primarily due to the emergence of pre-paid wireless, Lifeline-only ETCs.[259] USAC projects that the low-income program fund will be $1.5 billion in 2011.[260] In its recent *2010 Recommended Decision*, the Joint Board recommended that the Commission develop a full record on the recent growth in low-income program support.[261]

144. *Discussion.* We are mindful of the impact of the growth in the program on the consumers and businesses that ultimately support USF through fees on their phone bills. As we undertake

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[252] However, the ETC is still required to adopt a process for verification of income or program eligibility. *See* Verification discussion *supra* Section VII.B.

[253] We note that should we adopt these proposals, there are other outstanding issues preventing the complete resolution of the *Qwest Petition* during this proceeding.

[254] *See* 47 U.S.C. §§ 254(b)(5).

[255] *See* NATIONAL BROADBAND PLAN at 149 (Recommendation 8.11); *see also High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477, 20484, para. 25 (Jt. Bd. 2007) (*2007 Recommended Decision*).

[256] *See, e.g.,* 47 C.F.R. § 32.9000 (defining mid-sized incumbent local exchange carrier with annual revenue indexed for inflation as measured by the Department of Commerce Gross Domestic Product Chain-type Price Index (GDPCPI)); *Schools and Libraries Universal Service Support Mechanism*, *A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18781, para. 36 (2010) (*E-Rate Sixth Report and Order*) (amending Commission rules to index the E-rate program funding cap to the rate of inflation on a going-forward basis).

[257] *USF/ICC Transformation NPRM*, FCC 11-13, at paras. 394-97.

[258] Adjustments for inflation were calculated using the Bureau of Labor Statistics' Consumer Price Index Inflation Calendar. *See* http://www.bls.gov/data/inflation_calculator.htm (last visited Mar. 2, 2011).

[259] 2010 GAO REPORT at Exec. Summary. As discussed above, pre-paid wireless Lifeline service now accounts for one-third of Lifeline support.

[260] *See* USAC 2Q 2011 FILING, at 16.

[261] *See Joint Board Recommended Decision*, 25 FCC Rcd at 15630, para. 91.

comprehensive reform and modernization of USF, we are committed to controlling costs and constraining the overall size of the Fund.[262] Many of the proposals contained herein to eliminate waste, fraud, and abuse and improve program administration could reduce expenditures and the size of the program. For example, eliminating duplicate claims and tightening our rules on customary charges eligible for Link Up support should result in reduced expenditures. We note that fund growth is not necessarily indicative of waste, fraud, and abuse.[263] We recognize that demand for low-income support fluctuates based on a number of factors, including changes in qualifying assistance programs and macroeconomic conditions. We also note that the program has an ultimate cap in that only a defined population of eligible low-income households may participate in the program, and support is limited to a maximum of $10 per month per household (other than on Tribal lands). We seek comment generally on how to balance these principles, while retaining our commitment to enabling households in economic distress to obtain access to essential communications services.[264]

145. In light of concerns about the growth of Lifeline/Link Up, we seek comment on a proposal to cap the size of the Lifeline/Link Up program, for example at the 2010 disbursement level of $1.3 billion.[265] We ask whether and how a capped fund could continue to ensure telephone access for low-income households[266] and support potential expansion for broadband as discussed below.[267] We seek comment on whether any cap should be permanent or temporary, perhaps lasting for a set period of years or until the implementation of structural reforms proposed in this Notice.

146. If the Commission were to cap the program, either as an interim measure or permanently, what would be an appropriate cap level? How should such a level be determined? For example, should it be higher or lower than the 2010 size of the program? Should a cap be indexed to inflation, similar to other USF program funds subject to caps, or adjusted based on unemployment rates?[268] We seek comment on whether there should be exceptions to a cap. For example, should low-income support for eligible residents of Tribal lands be exempt, given the very low telephone penetration rate on Tribal lands, as well as the unique circumstances and challenges faced by residents of Tribal lands?[269] If we were to

[262] As we stated in the *USF/ICC Transformation NPRM*, the Commission "plans to be guided by the following four principles [including] . . . Control the size of USF as it transitions to support broadband, including by limiting waste and inefficiency." *See USF/ICC Transformation NPRM*, FCC 11-13, para. 10.

[263] *See 2010 Recommended Decision*, 25 FCC Rcd at 15647-48 (statement of Senior Assistant Attorney General ffitch).

[264] As the United States Court of Appeals for the Fifth Circuit held in *Alenco*, "[t]he agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service." *Alenco Commc'ns, Inc. v. FCC*, 201 F.3d 608, 620–21 (5th Cir. 2000) (*Alenco*). The *Alenco* court also found that "excessive funding may itself violate the sufficiency requirements." *Id.* at 620. The United States Court of Appeals for the Tenth Circuit has stated that "excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in [section] 254(b)(1)." *Qwest Comm'ns Int'l Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005).

[265] This figure is based on USAC estimates. *See* USAC 2Q 2011 FILING, Appendices at M04.

[266] The Commission has had a long-standing commitment to providing support that is sufficient but not excessive. *See Tenth Circuit Remand Order*, 25 FCC Rcd at 4088, para. 29 (concluding that a determining the sufficiency of support must also take into account the Commission's generally applicable responsibility to be a prudent guardian of the public's resources); *see also* discussion *supra* Section III (discussing the balancing of these objectives).

[267] *See infra* Section IX.B (The Transition to Broadband).

[268] *See, e.g.*, 47 C.F.R. § 32.9000; *E-Rate Sixth Report and Order*, 25 FCC Rcd at 18781, para. 36.

adopt a cap, should that cap be adjusted, for instance, if national or local unemployment exceeded a specified level?

147. We also seek comment on the appropriate way to administer a cap. Is a national cap more efficient, or would a state-by-state cap be a more equitable way to administer the Low Income program fund? As noted above, the Act contemplates achieving reasonably comparable access in all regions of the country.[270] Should regional differences be accounted for under a cap?[271]

148. If the Commission were to cap the program, we may also need to implement methods for prioritizing support among potential recipients. Should current participants in the program receive priority funding within a capped system? Alternatively, should funding be available on a first-come, first-served basis after a specified date for re-enrollment in the program? If so, given that disbursements vary monthly, how could ETCs be notified when the cap had been reached? If a participant loses services for any reason, such as non-use, should that participant necessarily receive funding upon re-enrollment, or would that person potentially have to wait until the next funding year? Should monthly benefits be reduced to ensure that all eligible households that seek to participate in the program can do so, even if they would receive a smaller benefit than program participants currently receive? We seek comments on these issues and other practical and operational issues that would need to be addressed if the program were capped.

149. If the Commission adopts a rule capping the low-income fund, should that cap be maintained if the Commission decides to support broadband with program funds? Would the inclusion of broadband necessitate different a different approach to prioritizing benefit allocations?

VII. IMPROVING PROGRAM ADMINISTRATION

150. In this section, we seek comment on how to improve key aspects of the current administration of Lifeline/Link Up, consistent with our goals of reducing waste, fraud, and abuse and modernizing the program. As discussed above, the Commission has historically provided considerable discretion to the states to administer key aspects of the program, such as eligibility, enrollment, and ongoing verification of eligibility. In order to bolster oversight of this federal program, we propose a core set of federal eligibility, certification, and verification requirements that would apply in all states, while seeking comment on allowing states to adopt additional measures that could complement the federal standards. Specifically, we propose to eliminate the option of self-certifying eligibility and to require all consumers in all states to present documentation of program eligibility when enrolling. We propose to increase sample sizes for ongoing verification and to require ETCs in all states to submit verification data to USAC and the Commission.

151. We also seek comment on ways to reduce barriers to participation in the program by service providers and low-income households, specifically through the use of coordinated enrollment with other social service assistance programs and the development of a national database that could be used for enrollment and verification of ongoing eligibility. These proposals are intended to improve

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[269] In imposing an interim cap on one component of the high-cost fund, the Commission created an exception for competitive ETCs serving tribal lands. *In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service; Alltel Communications, Inc., et al.Petitions for Designation as Eligible Telecommunications Carriers RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment,* WC Docket No. 05-337, CC Docket 96-45, Order, 23 FCC Rcd 8834 (2008).

[270] *See supra* Section III (Establishing Program Goals and Measuring Performance) (citing 47 U.S.C. § 254(b)(1), (3)).

[271] *See supra* para. 36 (noting that affordability has both an absolute and a relative component).

administrative efficiency, improve service delivery, and protect and improve program access for eligible beneficiaries.[272]

A. Eligibility Criteria for Lifeline and Link Up

152. *Background.* As discussed, eligibility requirements for the Lifeline and Link Up programs vary from state to state. Currently, Lifeline and Link Up eligibility is based upon participation in certain means-tested programs and, in some states, upon income. The federal default Lifeline and Link Up eligibility criteria—which apply in eight states and two territories—require consumers to either: (1) have a household income at or below 135 percent of the Federal Poverty Guidelines;[273] or (2) participate in at least one of a number of federal assistance programs.[274] Our rules allow the 42 remaining states with their own Lifeline and Link Up programs flexibility in establishing their own eligibility criteria.

153. During its most recent deliberations, the Joint Board recommended that the Commission seek comment on whether to adopt for all states uniform minimum income- and program-based eligibility standards.[275] Although the Joint Board supports the concept of minimum uniform eligibility requirements, it acknowledges the need to explore more fully the potential burdens and benefits.[276]

154. *Discussion.* We propose to amend our rules to require all states to utilize, at a minimum, the program criteria currently utilized by federal default states.[277] We further propose to allow states to maintain existing state-specific eligibility criteria that supplement the federal criteria. Currently, some states' criteria are more permissive than the federal criteria.[278] For example, Georgia extends program eligibility to senior citizens participating in low-income discount plans offered by local power and gas

[272] We note that in other contexts, the federal government is working to improve the delivery of federal assistance programs administered through state and local governments or where federal-state cooperation is beneficial. *See* Partner4Solutions, The Partnership Fund for Program Integrity Innovation, http://www.partner4solutions.gov/. The Partnership Fund for Program Integrity Innovation was established by the Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, 123 Stat. 3034 (to be codified as scattered statutes).

[273] 47 C.F.R. § 54.409(b). Based on the current federal poverty guidelines for the 48 contiguous states and Washington, DC, annual income of 135% of the guidelines is $14,702 for a one-person household or family; $19,859 for a two-person household or family; $25,016 for a three-person household or family; and $30,173 for a four-person household or family. Annual Update of the U.S. Dep't. of Health and Human Servs. Poverty Guidelines, 76 Fed. Reg. 3,367, 3,637-38 (Jan. 20, 2011).

[274] Federal programs qualifying consumers for the low-income program are: Medicaid; Supplemental Nutrition Assistance Program (SNAP), formerly known as Food Stamps; Supplemental Security Income (SSI); Federal Public Housing Assistance; Low-Income Home Energy Assistance Program (LIHEAP); National School Lunch Program's free lunch program; and Temporary Assistance for Needy Families (TANF). Low-income consumers living on Tribal lands may qualify by participation in one of several additional assistance programs: Bureau of Indian Affairs general assistance; Tribally-administered TANF; or Head Start (only those meeting its income-qualifying standards). *See* 47 C.F.R. § 54.409(c).

[275] *2010 Recommended Decision*, 25 FCC Rcd at 15601, paras. 8-9.

[276] *Id.*

[277] *See* 47 C.F.R. § 54.409(a), (b).

[278] *See* Georgia Public Service Commission – Lifeline Assistance Program & Link-Up Georgia, http://www.psc.state.ga.us/consumer_corner/cc_telecom/advisory/lifeline.asp (last visited March 1, 2011); *see also* Florida Public Service Commission – Lifeline Assistance and Link-Up Florida Brochure, http://www.floridapsc.com/utilities/telecomm/lifeline/engbrochure.aspx (last visited March 1, 2011); Kansas Corporation Commission – Kansas Lifeline Program, http://www.kcc.state.ks.us/pi/lifeline.htm (last visited March 1, 2011).

companies.[279] If we were no longer to allow states to utilize these existing state-specific eligibility criteria, current subscribers would become ineligible for Lifeline benefits, which could result in considerable consumer disruption. We seek comment on whether, going forward, states should be able to impose additional permissive eligibility criteria they deem appropriate, so long as these additional eligibility criteria are reasonably tied to income and the state in question provides additional monetary support to supplement the federal support.[280] We recognize that more permissive eligibility criteria could increase the number of Lifeline subscribers, and seek comment on how to strike the right balance between national uniformity and state flexibility to address local circumstances. We further seek comment on the nature and magnitude of the potential impact, costs, and benefits of imposition of our proposed minimum eligibility requirements.[281]

155. Today, ETCs operating in multiple states have to develop state-specific policies and procedures to assure compliance with state-specific program eligibility requirements. More uniform eligibility requirements could potentially lead to more streamlined and effective enrollment of eligible consumers, while lessening regulatory burdens on service providers. Moreover, as we explore cost-effective ways to strengthen the process of certification and validation of household eligibility,[282] more uniform requirements could also lessen administrative costs for the program and facilitate more effective monitoring and auditing. We ask whether requiring all states to utilize the federal eligibility criteria would simplify ETC processes for enrolling eligible households and verifying ongoing eligibility.

156. Would establishing a federal baseline of eligibility criteria place any burdens upon the states? What administrative changes would be required in those states where enrollment and ongoing verification of eligibility functions are performed by a state governmental agency or third-party administrator? Would any such burdens be justified by the benefits of a minimum uniform system? From the perspective of states or service providers, what are the benefits or burdens of maintaining the current system in which requirements vary from state to state? We ask whether allowing states to maintain and add permissive eligibility criteria beyond any minimum uniform criteria would prevent existing eligible Lifeline customers from losing Lifeline support. Finally, we ask whether a federal baseline of eligibility criteria would increase program participation.

157. In its *2010 Recommended Decision*, the Joint Board also recommended that we seek comment on raising the program's income eligibility criteria of 135 percent or below of Federal Poverty Guidelines to 150 percent or below of the FPGs.[283] We seek comment on raising the federal income threshold for program participation to 150 percent or below of the Federal Poverty Guidelines. Some federal programs linked by the low-income program, such as LIHEAP, already have a 150 percent threshold.[284] A number of commenters in the Joint Board proceeding urged that the income eligibility standard be increased in 150 percent.[285] The FPG formula has been criticized as dated and inaccurate,

[279] Georgia Public Service Commission – Lifeline Assistance Program & Link-Up Georgia, http://www.psc.state.ga.us/consumer_corner/cc_telecom/advisory/lifeline.asp (last visited March 1, 2011).

[280] *See* 47 C.F.R. § 54.409(a); *see also 2010 Recommended Decision*, 25 FCC Rcd at 15601, paras. 8-9.

[281] *2010 Recommended Decision*, 25 FCC Rcd at 15601, paras. 8-9; *see infra* Section VII.D (seeking comment on the development and implementation of a centralized database, including the costs of constructing and maintaining a database).

[282] *See infra* Section VII.D.2 (database).

[283] *2010 Recommended Decision*, 25 FCC Rcd at 15601, para. 10.

[284] Benton Joint Board Comments at 5-6.

[285] *See, e.g.*, NASUCA Joint Board Comments at 7.